

IN THE FIFTH CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE

WAYNE A. REED, individually and as  
Husband and next of kin of decedent,  
DIANA E. REED,

Plaintiff,

v.

SAINT THOMAS OUTPATIENT  
NEUROSURGICAL CENTER, LLC,  
HOWELL ALLEN CLINIC, a Professional  
Corporation, SAINT THOMAS NETWORK,  
SAINT THOMAS HEALTH, and ST.  
THOMAS HOSPITAL,

Defendants.

NO. 13C417

NOTICE OF FILING

Come now the Defendants, St. Thomas Outpatient Neurosurgical Center, LLC ("STOPNC") and Howell Allen Clinic, a Professional Corporation (hereinafter the "Defendants"), and hereby give notice to the parties and the Court of the filing of the supplemental affidavit of Debra Schamberg, RN.


The Defendants file the affidavit in further support of their Response to the Plaintiff's Motion to Compel and further evidence that the communications and documents relating to the quality improvement relationship between Michael O'Neal (pharmacist consultant) and Debra Schamberg, RN (facility director) and other STOPNC staff members with whom he communicated quality improvement information are privileged from discovery pursuant Tennessee law, specifically Tennessee Code Annotated § 68-11-272.



Each participant in the relationship (and the participants together) was acting as a "quality improvement committee," exercising the functions set out in the statute. As such, all communications, documents, and information related to the quality improvement process are privileged from discovery.

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC



---

C.J. Gideon, Jr., #6034

Chris J. Tardio, #23924

Matt Cline, #31076

Suite 1100

315 Deaderick Street

Nashville, TN 37238

(615) 254-0400

***Attorneys for Defendants  
Howell Allen and STOPNC***



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on the following via email on this 15<sup>th</sup> day of May, 2013:

William D. Leader, #9531  
George H. Nolan, # 14974  
Leader, Bulso & Nolan  
414 Union Street, Suite 1740  
Nashville, TN 37219

*Attorneys for Plaintiff*

William H. Lassiter, Jr.  
John Overton Belcher  
Lassiter Tidwell & Davis  
150 4<sup>th</sup> Avenue North, Ste. 1850  
Nashville, TN 37219

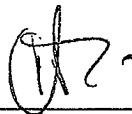
*Attorneys for Plaintiff*

Lela M. Hollabaugh, # 14894  
Amy D. Hampton, # 22826  
Bradley Arant Boult Cummings, LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203

*Attorneys for Defendant St. Thomas  
Hospital*

Mary M. Bers, #13159  
Joseph Ahillen, #028378  
Office of the Attorney General  
PO Box 20207  
Nashville, TN 37202-0207

*Attorneys for State of Tennessee*



---

**Chris J. Tardio**



IN THE FIFTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

WAYNE A. REED, individually and as )  
husband and next of kin of decedent, )  
DIANA E. REED, )

**Plaintiff,**

**V.**

**Case No. 13C417**  
**Jury Demand**

ST. THOMAS OUTPATIENT )  
NEUROSURGICAL CENTER, LLC, )  
HOWELL ALLEN CLINIC, a Professional )  
Corporation, SAINT THOMAS NETWORK, )  
SAINT THOMAS HEALTH, and SAINT )  
THOMAS HOSPITAL )

**Defendants.**

**AFFIDAVIT OF DEBRA SCHAMBERG, RN**

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

Comes Debra Schamberg, after first being duly sworn, and states as follows:

1. I am over 18 years of age, have personal knowledge of the facts contained herein, and am competent to testify to same.

2. I am the Facility Director of St. Thomas Outpatient Neurosurgical Center, LLC. I became St. Thomas Outpatient Neurosurgical Center, LLC's Facility Director in 2009. I am also a registered nurse. In this role, I perform various quality improvement functions, including communicating with St. Thomas Outpatient Neurosurgical Center, LLC's pharmacist consultant, Michael O'Neal, about quality improvement related to the purchase, storage, and use of medications.

3. St. Thomas Outpatient Neurosurgical Center, LLC is a licensed ambulatory surgical treatment center.



4. Michael O'Neal has been St. Thomas Outpatient Neurosurgical Center, LLC's pharmacist consultant since 2007, when he was first retained by St. Thomas Outpatient Neurosurgical Center, LLC. The relationship between St. Thomas Outpatient Neurosurgical Center, LLC and Michael O'Neal has been consistent and ongoing since 2007. Michael O'Neal's duties, as reflected in the contracts, have not changed during the entire duration of his relationship with St. Thomas Outpatient Neurosurgical Center, LLC.

5. St. Thomas Outpatient Neurosurgical Center, LLC pays Michael O'Neal for his services as a pharmacist consultant. The checks are issued by St. Thomas Outpatient Neurosurgical Center, LLC to Michael O'Neal for his quality improvement activities.

6. In 2007, Michael O'Neal was retained/employed by St. Thomas Outpatient Neurosurgical Center, LLC to perform quality improvement activities related to evaluating the safety, quality, processes, and appropriateness of St. Thomas Outpatient Neurosurgical Center, LLC's purchase, storage, and use of medications. That relationship continues through today.

7. The 2007 contract attached as Exhibit A is between St. Thomas Outpatient Neurosurgical Center, LLC and Michael O'Neal even though it says "St. Thomas Neurosurgery Associates" and mentions the "Oral Surgical Institute." Michael O'Neal provided the contract.

8. In 2007, Tina Sullivan was the Facility Director of St. Thomas Outpatient Neurosurgical Center, LLC. Tina Sullivan signed the 2007 contract.

9. The 2007 contract accurately memorializes Michael O'Neal's duties and responsibilities as St. Thomas Outpatient Neurosurgical Center, LLC's pharmacist consultant.

10. In mid-2012, I suggested to Michael O'Neal that we update the contract.

11. The 2012 contract attached as Exhibit B is between St. Thomas Outpatient Neurosurgical Center, LLC and Michael O'Neal even though it says "St. Thomas NeuroSurgery Center." Michael O'Neal provided the contract. I signed the contract on behalf of St. Thomas Outpatient Neurosurgical Center, LLC.



12. As St. Thomas Outpatient Neurosurgical Center, LLC's pharmacist consultant, Michael O'Neal evaluates the safety, quality, processes, and appropriateness of healthcare services at St. Thomas Outpatient Neurosurgical Center, LLC. He has done so continuously since 2007.

13. Michael O'Neal performs monthly inspections at St. Thomas Outpatient Neurosurgical Center, LLC to evaluate and improve the quality of the healthcare services rendered at St. Thomas Outpatient Neurosurgical Center, LLC.

14. During his monthly inspections, Michael O'Neal ensures that St. Thomas Outpatient Neurosurgical Center, LLC is operating in compliance with applicable state and federal laws regarding medications.

15. During his monthly inspections, Michael O'Neal ensures that St. Thomas Outpatient Neurosurgical Center, LLC staff members are properly carrying out various internal checks regarding St. Thomas Outpatient Neurosurgical Center, LLC's medications, thereby supervising St. Thomas Outpatient Neurosurgical Center, LLC's healthcare providers to a limited extent.

16. During his monthly inspections, with respect to medications, Michael O'Neal evaluates, reviews, and where necessary, recommends improvements of the methods, procedures and/or treatments being utilized at St. Thomas Outpatient Neurosurgical Center, LLC.

17. During his monthly inspections, Michael O'Neal reviews the activities of healthcare providers with regard to the purchase, use, and storage of medications.

18. As part of his activities to evaluate and improve the healthcare services rendered at St. Thomas Outpatient Neurosurgical Center, LLC, Michael O'Neal creates reports identifying areas of excellence and those in need of improvement. Michael O'Neal sends those reports to St. Thomas Outpatient Neurosurgical Center, LLC, typically to me. He provides written and verbal reports to me, and I receive those reports as part of my quality improvement duties at St. Thomas Outpatient Neurosurgical Center, LLC. Michael O'Neal and I discuss the findings in his reports.



19. As a member of St. Thomas Outpatient Neurosurgical Center, LLC's Medical Executive Committee, I relay the substance of those reports to the remaining committee members, and we discuss his evaluations and recommendations.

20. Also as part of his activities to evaluate and improve the healthcare services rendered at St. Thomas Outpatient Neurosurgical Center, LLC, Michael O'Neal communicates with staff members regarding areas of excellence and those in need of improvement. Specifically, Michael O'Neal communicates with me regarding the substance of his reports, particularly in those areas Michael O'Neal has identified as in need of improvement. These communications are for the purpose of improving the healthcare services rendered at St. Thomas Outpatient Neurosurgical Center, LLC.

21. Michael O'Neal and I work together to form strategies for St. Thomas Outpatient Neurosurgical Center, LLC to improve in areas Michael O'Neal has identified as in need of improvement. We also work together to come up with new ways for St. Thomas Outpatient Neurosurgical Center, LLC to further improve in areas that are currently operating satisfactorily. Our collaboration and discussions are for the purpose of improving the healthcare services rendered at St. Thomas Outpatient Neurosurgical Center, LLC.

22. The relationship between St. Thomas Outpatient Neurosurgical Center, LLC and Michael O'Neal has been consistent and ongoing since 2007. Michael O'Neal and his duties, as reflected in the contracts, have not changed during the entire duration of his relationship with St. Thomas Outpatient Neurosurgical Center, LLC.

23. With this affidavit, I do not intend to waive any protections or privileges of Tennessee law, particularly the quality improvement privilege.